

202 CMR: DIVISION OF STANDARDS

202 CMR 6.00: CONSUMER AND MERCHANT PROTECTION ACT COMMITTEE

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6.01: General Provisions

(1) General Provisions. 202 CMR 6.00 is promulgated pursuant to M.G.L. c. 98, § 29. M.G.L. c. 98, § 29 established the Consumer and Merchant Protection Act Committee and authorized it to promulgate regulations requiring every retail establishment to display information relative to how a local sealer or inspector or the division of standards may be contacted. Also, pursuant to M.G.L. c. 98, § 29, the Committee is authorized to promulgate regulations to certify all inspectors, sealers and deputies in accordance with M.G.L. c. 98, §§ 34, 35 & 36. The Committee shall issue a Certificate of Qualification to any individual upon satisfactory completion of all certification requirements. An applicant for certification must meet the qualifications and satisfactorily pass an examination as determined by the Committee. Upon receipt of a Certificate of Qualification pursuant to 202 CMR 6.00, a Weights and Measures Official shall be certified in accordance with M.G.L. c. 98, §§ 34, 35 and 36.

(2) Scope. 202 CMR 6.00 applies to all Weights and Measures Officials and applicants, and all retail establishments within the jurisdiction of the Division of Standards.

(3) Definitions. Unless otherwise stated, terms used in 202 CMR 6.00 are as defined and used in M.G.L. c. 98, § 1.

Certificate of Qualification, means a certification given by the Committee to Weights and Measures Officials pursuant to M.G.L. c. 98, § 29. A Certificate of Qualification given by the Committee is separate and distinct from a certification for additional weights and measures disciplines given by the Division of Standards, pursuant to 202 CMR 6.05.

Committee, means the Consumer and Merchant Protection Act Committee established by M.G.L. c. 98, § 29.

Disciplinary Action, includes but is not limited to: revocation, suspension, probation, censure,

reprimand, restriction, denial/restriction of privileges, resignation or termination of participation.

Mall Building, means a building enclosing a number of tenants and occupancies such as retail stores, drinking and dining establishments, entertainment and amusement facilities, passenger transportation terminals, offices and other similar occupancies wherein two or more tenants have a main entrance into one or more malls.

Retail Establishment, means any store, shop, supermarket, grocer, convenience store, wholesale club, warehouse seller, outlet, food store or food department and any merchant within the jurisdiction of the Division of Standards that sells any item to individuals for their personal, family, or household use.

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Sales Area, means the area of a retail establishment that is available or openly displayed to the public. Areas not available to the public, such as storage areas and management office space, shall not be included in the definition of sales area for determining square footage pursuant to 202 CMR 6.00.

Weights and Measures Official, means a sealer, deputy sealer, inspector, or deputy inspector as defined or used in M.G.L. c. 98.

6.02: Minimum Standards and Qualifications

An applicant for a Certificate of Qualification as a Weights and Measures Official must possess the following minimum qualifications in order to be eligible for certification:

- (1) The applicant is 18 years of age or over;
- (2) The applicant has a high school diploma or its equivalent;
- (3) The applicant has achieved a passing grade on the certification examination prescribed by the Committee or has a Civil Service examination exemption; and
- (4) The applicant is of good moral character

6.03: Application for Certification

(1) Certification Application. Application for a Certificate of Qualification as a Weights and Measures Official shall be made on a form provided by the Committee. Said application form shall be filled out completely and shall be accompanied by the following:

- (a) Official transcripts, or other official documentation satisfactory to the Committee, verifying that the applicant meets the educational requirements specified in 202 CMR 6.02;
- (b) Written documentation satisfactory to the Committee, verifying that the applicant meets the Civil Service exemption specified in 202 CMR 6.02(3), if applicable,
- (c) An identifying photograph; and
- (d) Any and all additional documentation which may be requested in writing by the Committee.

(2) Application Deficiency. Applicants shall be notified in writing of any deficiencies in their applications. If the requested additional information is not received by the Committee within 90 days of the date of the applicant's receipt of that written notice, the application shall no longer be considered for action by the Committee.

(3) Address Change. It is the responsibility of the applicant or registrant to notify the Committee in writing of any change of address.

6.04: Examination and Civil Service Certification

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(1) Certification Application. An applicant for a Certificate of Qualification as a Weights and Measures Official shall be required to pass an examination as determined by the Committee, which may include, but not be limited to, a written or computerized part to the examination and a performance part to the examination.

(2) Examination Content. Examinations shall be given at least once a year, and shall be conducted in the English language. The examination shall include such subjects as the Committee may direct. The content of said examination shall be reasonable and appropriate to the duties and functions of a Weights and Measures Official, and shall be sufficiently thorough to test the applicant's fitness to perform those duties and functions. Appropriate modifications may be made for applicants with disabilities or special needs, as determined by the Committee.

(3) Notice to Appear. Applicants shall be given advance written notice as to when and where to appear for the examination or any part of the examination.

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(4) Applicant Misconduct. Applicants who engage in the conduct described below shall have their examination materials confiscated, shall be denied permission to complete the examination and shall be required to leave the examination site:

- (a) Removing test materials from the examination room; reproducing in any manner or aiding in the reproduction of test materials; selling, distributing, buying or having unauthorized possession of test materials;
- (b) Communicating with any other examinee during the exam; copying answers or permitting answers to be copied; having in one's possession, during the examination, any material other than the examination materials; failure to obey instructions to stop working and/or starting the examination prior to being authorized to do so;
- (c) Falsifying or misrepresenting educational credentials or other information required for admission to the exam; having another person take the exam on one's behalf.

(5) Mailing of Results. Results of the examination shall be mailed to the applicant.

(6) Passing Score. The passing score for the examination shall be determined by the Committee.

(7) Civil Service Certification. The Committee may issue a Certificate of Qualification without examination to any Weights and Measures Official who has passed a civil service examination for his position. The Committee shall require documentation that the Weights and Measures Official has passed such civil service examination.

6.05: Division of Standards Certification of Officials for Additional Disciplines

(1) Certification for Additional Disciplines. In addition to the receipt of a Certificate of Qualification from the Committee pursuant to 202 CMR 6.00, all Weights and Measures Officials who are required to certify devices or conduct inspections in any of the following weights and measures disciplines shall be certified by the Division of Standards:

- (a) unit pricing, conducted pursuant to M.G.L. c. 6, § 115A;
- (b) item pricing, conducted pursuant to M.G.L. c. 94, § 184C and 184D;
- (c) price verification, conducted pursuant to M.G.L. c. 98, § 56D;
- (d) package and label checking, conducted pursuant to 202 CMR 3.00;
- (e) taximeters, conducted pursuant to M.G.L. c. 98, § 45;
- (f) vehicle tank meters, conducted pursuant to 202 CMR 2.00 and the National Institute of Standards and Technology Handbook 44;
- (g) scales with a capacity greater than 100 pounds; and
- (h) motor fuel sales act compliance, M.G.L. c. 94, § 295(a) through (k).
- (i) home heating oil inspections, M.G.L. c. 94, s.303F;
- (j) any other discipline approved by the Certification Committee.

(2) Grandfather Provision. Persons who are currently employed as Weights and Measures Officials, who have engaged in a discipline listed in 202 CMR 6.05(1) on 5/14/99, and who can demonstrate to the satisfaction of the Division of Standards that they have received proper training in such discipline, shall be certified in such discipline by the Division of Standards

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within one year from the date of receipt of a Certificate of Qualification from the Committee or three years from 5/14/99, whichever date is later.

(3) Additional Discipline Pre-Qualification. Persons not meeting the criteria set out in 202 CMR 6.05(2) shall be certified by the Division of Standards before engaging in any of the disciplines listed in 202 CMR 6.05(1).

(4) Sanction. Failure of a Weights and Measures Official to be timely certified pursuant to 202 CMR 6.05(1), and 202 CMR 6.05(2) or 202 CMR 6.05(3) (whichever may be applicable) shall subject such official to discipline pursuant to 202 CMR 6.06, which shall include, but not be limited to, disqualification from certifying or conducting inspections of any disciplines listed in 202 CMR 6.05(1) in which said official was engaging.

6.06: Grounds for Disciplinary Action

The Committee may, by a majority vote, and after a hearing conducted in accordance with M.G.L. c. 30A and 801 CMR 1.00 *et seq.*, take Disciplinary Action against the Certificate of Qualification or other certification of a certified Weights and Measures Official. Grounds for such Disciplinary Action include, but are not limited to, the following:

- (1) Criminal Conviction. Conviction of any criminal offense related to the practice of his/her profession;
- (2) Fraud in Certification. Obtaining or attempting to obtain a certificate of certification by fraud, deceit, misrepresentation or the use of false or forged evidence of any kind, including but not limited to falsification of reports of continuing education courses, seminars, workshops or contact hours;
- (3) Incapacity. Lack of fitness to practice by reason of incapacitation due to mental impairment;
- (4) Fraud in Practice. Fraud or deceit in the course of his/her professional practice as a Weights and Measures Official;
- (5) Negligence. Negligence in the performance of his/her professional duties as a Weights and Measures Official;
- (6) Inadequate Continuing Education. Failure to meet the continuing education requirements set out in 202 CMR 6.07, 6.08, and 6.09;
- (7) Practical Examination Failure. Failure to meet any practical examination administered by the Division of Standards or the Committee;
- (8) Practicing without Certification. Practicing in a weights and measures discipline listed in 202 CMR 6.05(1) without certification by the Division of Standards; or
- (9) Misconduct. Any other form of misconduct in the practice of his or her profession.

6.07: Establishment of Continuing Education Requirements

- (1) Required Hours of Continuing Education. A certified Weights and Measures Official with less than ten (10) years of certified experience shall complete 3.0 continuing education units, or 30 contact hours, of continuing education every two years and more than ten (10) years 2.0 continuing education units, or 20 contact hours.
- (2) Attestation Requirement. A certified Weights and Measures Official shall attest under penalty of perjury that he/she has completed the number of continuing education units required by 202 CMR 6.07(1). Such attestation shall be made on a form prescribed and provided by the Committee.
- (3) Extenuating Circumstance Extensions. The Committee may grant an extension of the time

for completion of such continuing education to a certified Weights and Measures Official upon submission by the registrant of satisfactory proof of extenuating circumstances.

(4) Good Faith Extensions. If a particular continuing education activity is undertaken by a certified Weights and Measures Official in good faith, but the continuing education credit for that activity is denied or disapproved by the Committee, the certified Weights and Measures Official so affected shall be given one year from the date of the Committee's decision to correct the deficiency. Verification of completion of an acceptable substitute activity shall be submitted to the Committee within 60 days of its completion.

6.08: Standards for Continuing Education

The following standards are intended to assist a certified Weights and Measures Official in selecting appropriate continuing education activities. The overriding consideration in determining whether a particular continuing education activity qualifies for credit is whether it is an activity which contributes directly to the professional competence of a certified Weights and Measures Official.

(1) Acceptable Subject Matter - Appropriate subject matter for continuing education purposes shall include, but shall not be limited to, one or more of the following:

- (a) unit pricing, conducted pursuant to M.G.L. c. 6, § 115A;
- (b) item pricing, conducted pursuant to M.G.L. c. 94, § 184C and 184D;
- (c) price verification, conducted pursuant to M.G.L. c. 98, § 56D;
- (d) package and label checking, conducted pursuant to 202 CMR 3.00;
- (e) taximeters, conducted pursuant to M.G.L. c. 98, § 45;
- (f) vehicle tank meters, conducted pursuant to 202 CMR 2.00 and Handbook 44;
- (g) scales with a weight capacity greater than 100 pounds;
- (h) motor fuel sales act, M.G.L. c. 94, § 265(a) through (k);
- (i) motor fuel dispensers
- (j) small capacity scales with a weight capacity of 100 pounds or less.

(2) Methods of Obtaining Contact Hours. Continuing education contact hours may be obtained as follows:

- (a) Through courses or seminars offered, sponsored or endorsed by the Division of Standards for Weights and Measures Officials.
- (b) Through courses or seminars offered or sponsored by educational institutions or other recognized entities which have relevance to the duties and functions of a Weights and Measures Official, and for which academic credit or continuing education contact hours are granted by that entity. Such courses or seminars shall be taught by faculty who possess adequate knowledge of both the principles of adult education and the particular subject matter being taught.
- (c) Through programs, workshops or conferences offered or sponsored by a recognized entity. Such programs, workshops or conferences shall be relevant to the duties of a Weights and Measures Official, shall have well defined objectives, and shall be conducted by faculty who possess adequate knowledge of both the principles of adult education and the particular subject matter being taught.
- (d) By teaching a particular course, conducting a seminar or workshop, delivering a lecture, or publishing an article or book relating to the duties of a Weights and Measures Official, for the first time.
- (e) Employee orientation or in-service training presentations concerning standard operating procedures specific to the employing agency or entity shall not be accepted for continuing education purposes.

(3) Amount of Credit Earned. The amount of continuing education contact hours to be granted shall be determined as follows:

- (a) A certified Weights and Measures Official who attends a course or seminar offered, sponsored or endorsed by the Division of Standards shall earn a number of continuing

education contact hours equal to the number of contact hours of instruction actually provided;

(b) A certified Weights and Measures Official who attends a course or seminar offered or sponsored by an educational institution for which academic credit may be granted shall earn 15 continuing education contact hours for each semester hour of academic credit received, and shall earn eight continuing education contact hours for each semester hour audited;

(c) A Certified Weights and Measures Official who attends a course or seminar offered or sponsored by a recognized entity other than an educational institution shall earn a number of continuing education contact hours equal to the number of contact hours of instruction actually provided;

(d) A Certified Weights and Measures Official who attends a program, workshop, lecture or conference offered or sponsored by any recognized entity shall earn a number of continuing education contact hours equal to the number of contact hours of instruction or lecture actually provided;

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- (e) A Certified Weights and Measures Official who teaches a particular course or seminar, conducts a workshop, or delivers a lecture shall be given a number of continuing education contact hours equal to the number of contact hours of instruction or lecture actually provided;
- (f) A Certified Weights and Measures Official who publishes a book, article, chapter, or brochure relating to weights and measures for the first time shall earn nine continuing education contact hours for publishing a book; five continuing education contact hours for publishing a chapter of a book, or for publishing an article in a scientific or technical journal; and one continuing education contact hour for publishing an article in a newsletter published by a recognized entity.

6.09: Verification of Continuing Education

(1) Committee Information Requests. Upon written request by the Committee, a certified Weights and Measures Official shall furnish to the Committee such information as the Committee may require about any course, program, lecture, workshop, conference, book, article or other publication for which that certified Weights and Measures Official claims continuing education credit. Such information shall be submitted on a form prescribed and provided by the Committee, and shall include, but shall not necessarily be limited to, the information required by 202 CMR 6.09(2) or (3), whichever applies.

(2) Verification Documents. A certified Weights and Measures Official who is requested to submit verification of a qualifying course, program, lecture, workshop or conference shall submit a written statement (or photocopy) which shall include the following information:

- (a) The name of the recognized entity which conducted or sponsored the course, program, lecture, workshop or conference;
- (b) The location of the course, program, lecture, workshop or conference;
- (c) The title and authorized number of the course, program, lecture, workshop or conference;
- (d) The date or dates of attendance;
- (e) The copy of any certificate issued in relation to any course, program, lecture, workshop, or conference;
- (f) The number of contact hours completed;
- (g) The name and signature of the registrant;
- (h) The name and signature of an authorized representative of the recognized entity providing or sponsoring the activity; and
- (i) Such other information as the Committee may reasonably require.

(3) Article or Book Documentation. A certified Weights and Measures Official requested to submit verification of published articles or books for which continuing education credit is sought shall submit the following information:

- (a) The title of the book, chapter or article and, in the case of a chapter or article, the title of the book or name of the journal or newsletter in which it appears;
- (b) The date of publication; and
- (c) The names of any co-authors.

The Committee may require a certified Weights and Measures Official to provide a copy of

the actual book, chapter, brochure or article for which continuing education credit is claimed.

(4) Recognition of Continuing Education Entities. The Committee shall not grant "recognized entity" status to any educational institution, professional organization or other entity, or grant continuing education credit for courses, programs, lectures, workshops or conferences conducted or sponsored by such an entity, unless that entity maintains written records pertaining to each such continuing education activity for a period of four years from the date the course, program, lecture, workshop or conference is conducted. Such records must be adequate to permit verification of any information submitted by a Certified Weights and Measures Official pursuant to 202 CMR 6.09(2).

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6.10: Notice to Consumers

(1) Display Requirements - Stores of 3000 Square Feet or More of Sales Area. Every retail establishment that has a Sales Area of 3,000 square feet or more shall display a consumer notice on how a consumer may contact the Division of Standards or a local weights and measures official. Such notice shall be as follows:

- (a) Layout. The notice shall be 8½" wide by 11" long.
- (b) Content. Subject to the exception set out in 202 CMR 6.10(1)(d), the notice shall contain the following information, in the form, color and size lettering as Consumer and Merchant Protection Act Committee Form 1, available at the Division of Standards, One Ashburton Street, Room 1115, Boston, MA 02108:

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
DIVISION OF STANDARDS

IMPORTANT CONSUMER NOTICE!

DO YOU HAVE A PRICE ACCURACY QUESTION
OR A QUESTION REGARDING

SCANNER OVERCHARGE
UNIT PRICING
INSUFFICIENT WEIGHT OR MEASURE
OR
WEIGHTS AND MEASURES ISSUES?

PLEASE CONTACT
THE DIVISION OF STANDARDS
ONE ASHBURTON PLACE
BOSTON, MA 02108

CALL TOLL FREE 1-888-283-3757

FAX 617-727-5705
OR E-MAIL
ask@consumer.com

- (c) Display Area.
 - 1. The notice shall be posted in a clear and conspicuous place in each retail establishment at each customer service area.
 - 2. If a retail store does not have a customer service area, the notice shall be posted in a clear and conspicuous place at each store exit.
 - 3. If a retail store is located within a mall building, the notice shall be posted at every mall building exit. This posting requirement for retail stores in a mall building shall substitute for any notice otherwise required by 202 CMR 6.10(1) and (2).
 - 4. Nothing shall obstruct the view to consumers of any notice required by 202 CMR

6.00.

(d) Local Jurisdiction Exception.

1. Upon the approval of the Director, a local Weights and Measures Official may require all retail stores within the official's approved jurisdiction to display a substitute notice containing all the information specified under 202 CMR 6.10(2)(b) except for the contact information, which shall be replaced by the contact information of the local Weights and Measures Official.
2. Upon said approval, such local weights and measures official shall provide an alternate form meeting the requirements of 202 CMR 6.10(2)(a) to all retail stores in its approved jurisdiction.

(2) Display Requirements - Stores Under 3000 Square Feet.

- (a) Every retail establishment which has an area of less than 3,000 square feet shall display a consumer notice on each weighing and measuring device in a form approved by the Division of Standards.

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- (b) If any retail establishment which has an area of less than 3,000 square feet does not use any weighing or measuring devices, the retail establishment must post a consumer notice in accordance with the requirements of 202 CMR 6.10(1).

6.11: Enforcement of Notice Requirement

- (1) Fines. Any retail store that fails to comply with the provisions of 202 CMR 6.10 are subject to a fine not exceeding, for the first offense, \$100 and, for the second or subsequent offense, a fine not exceeding \$500, or shall be subject to a civil citation as provided in M.G.L. c. 98, § 29A.
- (2) Mall Building Fines. Each retail establishment in a mall building may be fined for any mall building which is not in compliance with the notice requirements set out in 202 CMR 6.10(1)(c)3.

6.12: Advisory Opinions, Alternative Notices, and Waiver

- (1) Advisory Opinions. The Division of Standards may, in its sole discretion, issue advisory opinions regarding issues arising during the enforcement of 202 CMR 6.00.
- (2) Alternative Notices and Waiver Authority. The Division of Standards may, in its sole discretion, allow a retail establishment to use an alternative method of providing the required consumer notice information and may waive any of 202 CMR 6.00, if such alternative method or waiver would be in the public interest and serve to carry out the purpose or intent of 202 CMR 6.00 and M.G.L. c. 98.

REGULATORY AUTHORITY

202 CMR 6.00: M.G.L. c. 98, § 29.